

### **REMARKS**

Claims 1-49 were pending in the application. Claims 1-49 stand rejected. Through this Response and Amendment, claims 1, 3-4, 12-13, 16-17, 21, 24, 26, 31, 34, 38 and 41 have been amended and claims 2, 15, 23 and 37 have been canceled. No new matter has been introduced into the application. As explained in more detail below, Applicants submit that all claims are in condition for allowance and respectfully request such action.

### **Claim Rejections – 35 USC § 103**

Claims 1-49 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 6,269,285 to Mignault ("Mignault"). The Applicants respectfully disagree and traverse the rejection. The claims have been amended to include the feature of a processing device, controller or computer that is configured to provide notification of the position of the pusher assembly or that a deviation in amount of product typically removed from the shelf has occurred. These amendments to the claims are supported at least by paragraphs [18], [71] and [76]-[77] of the application as originally filed.

In contrast to the amended independent claims, Mignault is directed to inventory monitoring of ice cream products that are placed on plates mounted to support springs in a freezer, then using a magnetic field associated with the location of the plates to determine the amount of product remaining in the freezer. (See Abstract of Mignault) Mignault relates only to monitoring inventory and is completely silent regarding at least the feature of a processing device, controller or computer configured to provide a notification or the position of the pusher assembly or that a deviation in the typical movement of the pusher assembly has occurred. Mignault is also completely silent regarding the claimed use of indicia strips, optical sensors and the automatic ordering of additional inventory. Additionally, Mignault is silent concerning the prevention of a potential theft situation. Consequently, the independent claims, as amended, cannot be considered obvious in view of the teachings of Mignault. The dependent claims are patentable over Mignault for at least the same reasons as the independent claims and for the additional features recited therein.

**CONCLUSION**

The Applicants respectfully request consideration of the application and allowance of all pending claims. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,  
**BANNER & WITCOFF, LTD.**

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